

UNITED STATES DISTRICT COURT

for the

District of Oregon

United States of America

v.

NICHOLAS JOSEPH BANTISTA

Case No. **3:20-mj-239***Defendant(s)***CRIMINAL COMPLAINT
BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 9/18/2020 in the county of Multnomah in the
 District of Oregon, the defendant(s) violated:*Code Section*

18 U.S.C. § 111(a)(1)

Offense Description

Assaulting a Federal Officer, Class A Misdemeanor

This criminal complaint is based on these facts:

See Affidavit of DHS FPS SA Thomas McNutt attached hereto and incorporated by reference.

☒ Continued on the attached sheet.

via telephone

Complainant's signature

DHS FPS SA Thomas McNutt

*Printed name and title*Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
telephone at 4:35 ~~a.m.~~ p.m.Date: 09/20/2020
*Judge's signature*City and state: Portland, Oregon

Hon. Jolie A. Russo, U.S. Magistrate Judge

Printed name and title

I, Thomas McNutt, being duly sworn, do hereby depose and state as follows:

1. I, Thomas McNutt, am a federal law enforcement officer within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws of the United States and duly authorized by the Attorney General to request an arrest warrant. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18 of the United States Code. I have been employed as a Special Agent with the United States Department of Homeland Security / Federal Protective Service (DHS/FPS) since March of 2013. I am currently assigned as a general crimes agent out of Baltimore, Maryland.
2. As a Special Agent, I have participated in all the normal methods of investigation, including electronic surveillance, physical surveillance, interviews of witnesses, execution of search and arrest warrants, and the use of sources and cooperating witnesses. I have investigated and assisted other agents/inspectors in investigating, federal and state firearm violations, threats to federal government employees, bomb threats to federal facilities, suspicious packages, thefts, burglaries, assaults, narcotics, threats against federal facilities/employees and destruction of government property.

3. I submit this affidavit in support of a complaint for Nicholas Joseph BANTISTA. As set forth below, there is probable cause to believe that BANTISTA committed the following offense: assault of a federal officer in violation of Title 18 United States Code § 111(a)(1), as a Class A misdemeanor, when he threw an unidentified object at an agent of the Federal Protective Service, striking him on his helmet at the Immigration and Customs Enforcement (ICE) facility in Portland, Oregon.
4. The facts set forth in this affidavit are based on the following: my own personal knowledge, knowledge obtained from other individuals during my participation in this investigation, including other law enforcement officers, interviews of witnesses, my review of records related to this investigation, communication with others who have knowledge of the events and circumstances described herein, and information gained through my training and experience. Because this affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a criminal complaint and arrest warrant, it does not set forth each fact that I or others have learned during this investigation.

Applicable Law

5. 18 U.S.C. § 111(a)(1) makes it an offense to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in 18 U.S.C. § 1114 while engaged in or on account of the performance of official duties. Persons designated in § 1114 include any officer or employee of the United States or of any agency in any branch of the United States government while such officer or employee is engaged in or on account of the performance of official duties, and any person assisting such an officer or employee in

the performance of official duties. Under § 111(a), simple assault is a misdemeanor, but where the assaultive acts involve physical contact with the victim, the offense is a felony.

Statement of Probable Cause

6. Starting on or about May 26, 2020, protesters have gathered in Portland, Oregon's public areas to protest. Some of these public areas are Lownsdale Square, Chapman Square, Terry Schrunk Plaza, and the ICE facility located at 431 SW Macadam Avenue. Daily protests have regularly been followed by nightly criminal activity in the form of vandalism, destruction of property, looting, arson, and assault. One of the most violent of these incidents on federal property occurred on May 28, 2020, when the Portland Field Office for Immigration and Customs Enforcement was targeted by a Molotov Cocktail. Federal law enforcement officers have been subjected to physical assaults, verbal threats, aerial fireworks including mortars, high intensity lasers targeting officer's eyes, hard projectiles (rocks, glass bottles and metal food cans), balloons filled with paint, bodily waste and vulgar language from demonstrators while performing their duties. On July 11, 2020, a protestor physically attacked a federal Officer, at the Mark O. Hatfield Courthouse, by striking the officer several times with a sledgehammer to the upper body and head.
7. On September 18, 2020, at approximately 11:30 p.m., at the ICE facility, in Portland, OR, BANTISTA did forcibly assault an agent of the Federal Protective Service, (Agent Victim 1) who was engaged in the performance of his official duties, in violation of Title 18, United States Code, Section 111(a)(1), as a Class A Misdemeanor.

8. AV1 and I were positioned at the intersection of SW Bancroft Street and S Moody Street along with a multitude of FPS officers in order to address a large group of demonstrators. The demonstrators had been verbally warned multiple times that the gathering had been deemed unlawful and were ordered to disperse. A bulk of the demonstrators refused to disperse, remained in the area, and continued to throw objects at FPS officers.
9. AVI and I observed a person, later identified as BANTISTA, throw an unidentified object, but was believed to be a small rock, that struck AV1 on his helmet. After throwing the object, BANTISTA fled on foot, North on Moody Ave. AVI and I, along with other FPS officers pursued BANTISTA on foot. BANTISTA was taken to the ground in order to effect an arrest. BANTISTA resisted arrest throughout the entire event by pulling his arms under his chest and refusing to comply with verbal orders from Law Enforcement. During the struggle, a gun (later found to be an air soft replica) was discovered wedged between BANTISTA's chest and the ground. The gun was recovered on scene. BANTISTA was placed in flex cuffs and escorted to the ICE facility for processing.
10. During an interview conducted at 3:13 a.m. on September 19, 2020, BANTISTA signed a waiver of rights form and discussed his past experience with law enforcement officers. BANTISTA admitted to throwing an object at the officer but claimed that it was a "bouncy ball" and that he did not intend any violence. Officers had witnessed bouncy balls thrown earlier in the evening. AV1 stated that the object felt denser than a "bouncy ball," and the sound and impact of the object felt against AV1's helmet was more consistent with a rock.

11. BANTISTA also admitted to possessing a “pellet gun” and was found in the possession of nail gun powerload cartridges, as shown below:



12. A review of law enforcement data bases indicate that BANTISTA was convicted of felony aggravated assault of a peace officer in Illinois (September 2019); and was arrested for criminal damage to state property in Illinois (June 2020).

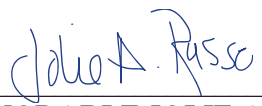
Conclusion

13. Based on the foregoing, I have probable cause to believe, and I do believe, that Nicholas Joseph BANTISTA committed assault on a federal officer, in violation of Title 18 U.S.C § 111(a)(1), as a Class A misdemeanor. I therefore request the Court issue an arrest warrant and criminal complaint for BANTISTA.

14. Prior to being submitted to the Court, this affidavit, the complaint and the arrest warrant were all reviewed by Assistant United States Attorney Natalie Wight. In her opinion the affidavit and complaint are legally and factually sufficient to establish probable cause to support the issuance of the requested criminal complaint and arrest warrant.

Sworn to by telephone pursuant to FRCP 4.1
Thomas McNutt
Special Agent, Federal Protective Service

Sworn to by telephone or other reliable means at 4:35~~am~~/p.m. in accordance with
Fed. R. Crim. P. 4.1 this 20 day of September 2020.



HONORABLE JOLIE A. RUSSO
United States Magistrate Judge